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New 'Amazon tax' law hits small firms in wallet

By JAN NORMAN

Thousands of small-business owners – not to mention schools and nonprofits – are scrambling to figure out how much revenue they'll lose as hundreds of online retailers cancel their affiliate programs in response to California's new Internet sales tax law.

On June 29, Gov. Jerry Brown signed a bill into law requiring online retailers that use affiliate advertising on California-based websites to start collecting sales tax on purchases from California customers.

A state can require only businesses with some physical presence within its borders (called nexus) to collect sales tax on purchases from Californians. This new law defines these California-based affiliates as the nexus for online retailers. Immediately, Amazon.com and many other online retailers terminated their affiliate programs with an estimated 25,000 websites.

Here's how affiliate programs work: A website has an ad with a hotlink to an online retailer. If a site's visitor clicks on the link and buys something, the site's owner receives a small commission. Many of the sites are for-profit businesses with employees, and others are museums, charities and schools that have benefited from the business model.

The new law has been called the Amazon law, because the online retailer is by far the biggest user of affiliate advertising. According to the Board of Equalization, the biggest online retailers with California affiliates are Amazon.com, LL Bean, Overstock.com, Redcats, Vistaprint and Drugstore.com.

Supporters of the law estimate it will bring \$200 million to \$300 million in sales tax each year to financially-strapped California plus it will level the playing field for retailers with physical shops in California that have to collect [the 7.25 percent to 8.75 percent in sales tax](#) on every purchase.

But many of the small-business owners who are losing their affiliate advertising revenue say the state won't get any more income because many online retailers will not cooperate.

California residents can still buy from online retailers that have ended their affiliate programs without paying sales tax, so critics argue California will not gain any sales tax revenue and may lose income tax from in-state affiliates that lose income.

Tom Messick, owner of employeeemail.com in Yorba Linda, provides employee discount programs for hundreds of companies nationwide. He has affiliate relationships with 300 companies that pay him a commission when employees use their products or services, such as yoga. He estimates the revenue is about 25 percent of his business.

Amazon is not one of the companies Messick is affiliated with. But to date, 15 of these companies have terminated their affiliate programs with Messick and other California firms "and the notices are coming in on a daily basis," he said.

"It's not so much the loss of revenue," Messick said. "What bother me is having a competitive disadvantage with companies in other states that provide employee discounts."

SurfMyAds.com in Santa Monica will be hit even harder. The company operates an international network of shopping sites such as PromotionalCodes.com, CouponWinner.com, myShoes.com and Coupons.ca. Affiliate commissions are the company's primary source of revenue.

"So far we have received termination notifications from just over 100 of our merchant partners," said Alexis Caldwell, director of affiliate and partner marketing. "However, we expect this number to increase over the coming weeks as more merchants receive word from their legal teams that they must sever their ties with California affiliates."

Ebates in San Francisco is another online shopping site that has an active affiliates program. It has received more than 60 termination notices from online retailers. "We will see what the impacts are on our business over the coming weeks," said Ebates official Rob Smahl. "If we cannot restructure our working relationships with the retailers who terminated their affiliate programs, then we will consider all options as necessary up to moving out of state."

Loren Bendele, CEO at Savings.com in Los Angeles, said, "Essentially this is a California small business tax, so ultimately it hurts businesses like ours. When Illinois passed this law, all the major players in our industry moved out of the state. I'm afraid this will have a similar impact on California and cause the tech industry to migrate to other states."

The Board of Equalization, which administers California's sales tax, will soon start notifying out-of-state retailers that they must register and start collecting the sales tax on California purchases and hope for voluntary compliance, said

spokeswoman Anita Gore. Those that fail to register will eventually received bills based on estimates of their tax liability and if they don't respond or pay, the board can put liens on their (out-of-state) property and bank accounts."

Although Amazon immediately terminated its affiliate program, California's new law has been written in such a way that the retailer is singled out to collect sales tax without its affiliates. The law requires an out-of-state retailer to collect California sales tax if it has subsidiaries in California.

Amazon has several subsidiaries located in California including Lab126 in Cupertino that designed the Kindle and a soon-to-be released tablet.

Amazon has not yet responded to several Register inquiries about its reaction to this aspect of the law. Amazon is the only company affected by this provision, according to David Duran, spokesman for Board of Equalization member George Runner.

Runner and board vice chairman Michelle Steel maintain that the new law is unconstitutional.

"This law will not only hurt those Californians now out of work, but also the businesses where they used to shop," Steel said in a prepared statement. "Though the legislature has required BOE to carry out this misguided law, it will create no new revenue and instead cost the state lost income taxes from lost jobs and expensive legal fees from drawn out litigation."

She noted that Amazon's lawsuit against New York for a similar tax has been going on for three years. A court struck down Colorado's online sales tax law and Rhode Island and North Caroline report their online sales tax laws have brought in no new revenues.

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